United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 26, 2005

TO : Ronald K. Hooks, Regional Director
Region 26

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: International Alliance of Theatrical Stage Employees, Local 915 (Max Tour Wardrobe)
Case 26-CB-4500

536-2545-0100
536-2545-1200
536-5025-8350
536-5075-0125
548-2067
548-6030-6725-4300
548-6030-6725-8300

This case was submitted for advice as to whether the Union violated Section 8(b)(1)(A) and (2) by refusing to refer a member from its exclusive hiring hall and by assessing her the costs of an intraunion trial.

We agree with the Region that the Union unlawfully suspended the member from its referral list, unlawfully threatened further suspension if she did not timely pay the trial cost assessment, and unlawfully maintained an internal regulation excluding from the referral list individuals who do not timely pay all financial obligations owed to the Union. We further agree, however, that the trial cost assessment itself was lawful.

FACTS

A. Background

Stage Employees IATSE Local 915 (the Union) operates a hiring hall from which it refers wardrobe employees for part-time or casual work on Broadway-type shows in Nashville, Tennessee. The Union has about 10 members, many of whom are related to each other, and no paid staff. The Union hiring hall is the exclusive supplier of wardrobe employees for "yellow card" shows at the Tennessee Performing Arts Center (TPAC) in Nashville,[1] and also

[1] A yellow card show is one where the actors are members of the Actors' Equity Union. Yellow card shows travel the United States with their own actors and crew but, pursuant to "engagement agreements" between the venue and the shows' producers, the venue furnishes the personnel for stage setup and breakdown and wardrobe assistance. TPAC employs its own wardrobe employees for non-yellow card shows.

supplies employees to other venues where it is not the exclusive source of referrals. TPAC and the Union have had informal yearly agreements specifying the wages and working conditions for yellow card shows since about 1980. TPAC follows the agreements, but does not sign them, because it does not wish to recognize the Union.[2]

B. Charging Party Faye Cole is dismissed from a production and directly contacts a supervisor regarding the dismissal.

A yellow card show called "The Producers" played at TPAC from March 23 to April 4, 2004,[3] and was produced by Max Tour Wardrobe ("Max Tour").[4] After the second performance of "The Producers" on March 24, Max Tour dismissed Charging Party Faye Cole from the production.[5] The dismissal paper stated that Cole [*FOIA Exemptions 6 and 7(c)*]. Cole and Union business agent Judy Resha discussed the dismissal with Max Tour supervisor Mike Lipsitz, who explained that he found Cole to be incompetent and that he did not have the time required to spend with her.

On March 25, Cole requested that Resha ask Lipsitz to provide a written statement regarding her mistakes during the production. A few days later, Cole received a three-page letter from Lipsitz, addressed to Resha, outlining numerous incidents indicating Cole's inability to follow directions.

In late March, Cole met with Union attorney Jim Stranch to discuss her dismissal from "The Producers." Cole showed Lipsitz's letter to Stranch and complained that Resha had not adequately represented her in the matter. According to Cole, Stranch read the letter and said that it looked like Resha had not represented her and had conspired with Lipsitz to dismiss her from the show. Stranch also told Cole that, in any event, Lipsitz had every right to

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[2] There is no evidence that the Union has ever claimed to be the exclusive collective-bargaining representative of a unit of employees at TPAC.

[3] All dates are in 2004 unless otherwise indicated.

[4] The Union supplied the wardrobe employees for "The Producers" per its unsigned agreement with TPAC.

[5] At the time, Cole was serving as Union president. She had served as Union business agent in the past.

dismiss Cole from the show because Max Tour was not under contract with the Union.

On April 27, at the Union's monthly executive meeting, Cole relayed her version of the meeting with Stranch.[6] Resha responded that Lipsitz had told her that Cole had worked for him before, and that he had found Cole to be a poor dresser.[7] Cole did not recall ever having worked directly for Lipsitz before.

On May 4, Cole called Lipsitz to ask whether she had ever been a dresser for him prior to "The Producers" show. Lipsitz confirmed Cole's recollection that she had never dressed for him prior to "The Producers."[8] According to Cole, Lipsitz stated that Resha told him that Cole had not dressed much and was not a good dresser.[9]

On about May 6, Resha informed Cole that she had no right to talk to any supervisors, that contacting Lipsitz was breaking the rules, and instructed her to have no more contact with Lipsitz. In a letter dated May 10, Resha informed Cole that the Union membership had decided to form a committee to see what action should be taken regarding Cole.

C. The Union files internal charges against Cole and temporarily suspends her from the referral list.

On June 19, following recommendations from the Union committee, several internal charges were filed against Cole. The internal charges alleged that Cole had:

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[6] International representative Mark Kiracofe was also present at the executive meeting.

[7] A dresser prepares costumes for the actors and assists them in donning and doffing their costumes.

[8] [*FOIA Exemptions 6 and 7(c)*], Lipsitz [*FOIA Exemptions 6 and 7(c)*]remembered Cole from when she served as business agent for the Union during Max Tour's "Scarlet Pimpernel" show at TPAC a few years back, and that she had been a disaster as a business agent.

[9] Lipsitz's account of the conversation differs. [*FOIA Exemptions 6 and 7(c)*] Cole tried to make him say statements that were untrue, i.e. that he and the Union had conspired to have her removed from "The Producers." Lipsitz [*FOIA Exemptions 6 and 7(c)*] denied Cole's assertions and recounted various functions that Cole had been unable to competently perform.

1. Violated Article X, Section 1 (Good Standing) of the constitution and by-laws by giving false information to International representative Kiracofe and other Union members at a Union meeting on April 27, when Cole said that Stranch thought there was a conspiracy to have her removed from a work call.[10]

2. Violated Work Rule Number 5[11] and Disciplinary Rule Number 2-B4[12] by communicating directly to a wardrobe supervisor on May 4 about a work-related issue instead of going through the job steward or business agent.

3. Violated Article VII, Section 3 of the constitution and bylaws by refusing two requests to supply a copy of a letter sent by Cole to International president Short.

4. Violated Article X, Section 1 of the constitution and by-laws, which requires members to comply with all obligations to the Union, by not keeping control of meetings.

5. Violated Article VII, Section 3 of the constitution and bylaws, which states that the president shall preside at all meetings of the membership, by missing meetings in January, March, and May.

6. Violated Article V, Section 2 of the constitution and bylaws, which require regular meetings to be held each month, by canceling meetings in April 2002, October 2002, November 2002, December 2002,

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[10] According to Article X, Section 1 of the Union's constitution and bylaws, paragraph 2, "a member who is not in good standing...shall be removed from the Referral List."

[11] Work Rule 5 reads as follows: "Never engage in a verbal conflict with the employer. Take your problem to the Job Steward or Head of the department."

[12] Disciplinary Rule 2-B4 provides that it is a serious offense to engage in "conduct or behavior damaging to the Union's contractual relations with employers, or conduct or behavior that disrupts or obstructs the Referral System or the Union's ability to carry out its duties and obligations."

January 2003, February 2003, March 2003, May 2003, and April 2004.

By letter dated July 7, the Union advised Cole that she had been temporarily suspended from the referral list until all the internal charges were settled at trial.[13] The letter specifically stated that the suspension was caused by Charge 1 (providing false information), a "major offense."[14] In a letter dated August 23, the Union informed Cole that the Executive Board had amended the reason for her temporary suspension from the referral list to include both Charge 1 and Charge 2, and that Charge 2 had been inadvertently left out of the July 7 letter.

D. The Union holds an internal trial and finds Cole guilty of Charges 1, 3, 4, 5, and 6.

On August 17, the Union began an intraunion trial against Cole to resolve the internal charges. Toward the end of the day, International representative Kiracofe and Cole's counselor, Marty Gilbert,[15] instructed the Union to remove Charge 2 (contacting the supervisor) from the trial, as it concerned a work rule, which should be dealt with by the Union's Executive Board. The hearing adjourned prior to completion and was scheduled to resume on August 30, but was subsequently rescheduled for September 3.

On about August 25, Cole advised the Region that the parties had reached a tentative settlement, which would return her to the referral list and would include backpay for the one show she had missed due to the suspension. Accordingly, Cole withdrew the Board charge in Case 26-CB-4476 based on her return to the referral list and the anticipated backpay.[16]

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[13] The Union's disciplinary rules state that the Union reserves the right to immediately suspend any person from the referral list if alleged to have committed a major or serious offense under the disciplinary rules.

[14] On August 11, in response to the notification of her removal from the referral list, Cole filed a Section 8(b)(1)(A) and (2) charge against the Union in Case 26-CB-4476.

[15] Gilbert is from another IATSE local.

[16] About a week later, Cole received a check paying her for the missed referral.

When the intraunion trial resumed on September 3, all of the internal Union charges were discussed, including Charge 2 (contacting the supervisor).[17] By letter dated September 4, the Union advised Cole that she had been found guilty of Charge 1 for committing perjury, and of Charges 3, 4, 5 and 6 for negligence of duty. The trial board recommended that she be removed from the office of Union president and assessed the costs of the trial. In addition, the trial board stated that Charge 2 alleged a work rule violation and recommended that it be handled by the Executive Board.

E. The Union's Executive Board finds Cole guilty of Charge 2 and suspends her from the referral list for four work calls.

On September 16, the Executive Board met with Cole to address Charge 2 regarding her May 4 phone call to Max Tour supervisor Lipsitz. In a letter dated October 4, the Union advised Cole that the Executive Board had ruled on Charge 2 and decided to suspend her for four work calls based on her violation of Disciplinary Rule 2-B4.

F. The Union assesses Cole the costs of the intraunion trial and threatens further removal from the referral list if not timely paid.

In a letter dated October 8, the Union advised Cole that the membership had voted on the findings of the trial board. The letter stated that Cole had been impeached and that she would be assessed $3,793.14 for the costs of the trial. The letter also advised that if Cole's financial obligations to the Union were not met within 10 days, she would be found to be a member "not in good standing." Article X, Section 1 of the Union's constitution and bylaws, at paragraph 2, provides that the failure of a member to pay a financial obligation owed to the Union within 10 days would automatically result in the member being declared "not in good standing." It further provides that a member not in good standing shall be removed from the referral list.[18] By letter dated October 18, the Union modified the itemized cost of the trial to $3,343.14. Also on October 18, Cole appealed the trial board decision to the International.

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[17] It is not clear to what extent Charge 2 was discussed at the trial.

[18] The Union's disciplinary rules also state that all fines must be paid in full before an individual is returned to the referral list.

On October 15, Cole filed the instant unfair labor practice charge, and subsequently amended it twice.

G. The Union passes Cole on four work calls and then returns her to the referral list.

By letter dated October 22, the Union advised Cole that: "In keeping with the Executive Board's ruling of your suspension on [September 16], please be advised that you were passed on the call for [the show] Oliver. This is the first of four turns." By letter dated November 15, the Union advised Cole that she had been passed on the referral list for the show "Miss Saigon" and that this was the second of her four turns. By letter dated February 11, 2005, the Union advised Cole that she had been passed on the referral list for the show "River Dance" and that this was the third of her four turns. By letter dated March 14, 2005, the Union advised Cole that she had been passed on the referral list for the show "Moving Out," and that this was the fourth of her four turns. The letter concluded that Cole would be reinstated to the "normal rotation" on the referral list.

By letter dated March 29, 2005, International President Short denied Cole's appeal, finding that the evidence adduced during the trial was sufficient to conclude that Cole was guilty of Charges 4, 5 and 6, and that the decision to impeach her and remove her from office was appropriate. Short expressly declined to address Charges 1 and 3, and made no mention of Charge 2 (contacting a supervisor).

In a letter dated April 8, 2005, the Union informed Cole that if she did not pay the trial cost assessment of $3,343.14 to the Union within 10 days, she would be considered "delinquent."

Cole still has not paid the Union the trial cost assessment. However, she has continued to make quarterly payments to the Union for her work card permit. In April 2005, the Union attempted to refer Cole to a show called "Chicago," but Cole was unable to accept the referral because she was out of town.

In a letter dated May 2, 2005, the Union threatened to sue Cole, if necessary, to collect the trial cost assessment of $3,343.14, and warned that this could also make Cole responsible for additional Union legal fees and expenses. The letter further states that "just because you are no longer a member of [the Union]...doesn't relieve you

from your financial obligation while you were a member."[19] Finally, the May 2, 2005 letter references the last paragraph of Article X, Section 1 of the Union constitution and bylaws, which states that payments of any financial obligation due by a member shall be enforceable by fine, suspension, expulsion, or resort to court action.[20] The letter did not reference the second paragraph of Article X, Section 1, which requires removal from the referral list for members "not in good standing."

The Union has not threatened to remove Cole from the referral list for failing to pay the trial cost assessment since the initial threat on October 8. The Union has recently informed the Region that Cole remains on the referral list notwithstanding her expulsion from Union membership and failure to pay the trial cost assessment.

ACTION

The instant ULP charge covers the July-August suspension from the referral list, the November-March 2005 four-call suspension from the referral list, the trial cost assessment, the threat not to refer absent timely payment of the trial cost assessment, and the maintenance of an internal regulation excluding from the referral list individuals who do not timely pay all financial obligations owed to the Union.

We agree with the Region that complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(1)(A) and (2) by suspending Cole from its referral list. Thus, the November-March 2005 suspension, based solely on Charge 2 (contacting a supervisor), was unlawful because the Union, as operator of an exclusive hiring hall, prevented Cole from working at TPAC based on conduct that was not wholly internal, and the suspension was not necessary to the effective performance of the Union's representative function. For the same reason, the July-August suspension, which was based in part on Charge 2 (contacting a supervisor), was also unlawful. We further agree that the Union lawfully charged Cole for the costs of the internal trial, because that penalty was based on Cole's wholly internal Union conduct and had no impact on her

[19] It thus appears that Cole was expelled from Union membership in about April 2005 for failure to pay the Union the trial cost assessment.

[20] The provision adds that the delinquent member shall be liable for reasonable legal fees and other expenses incurred by the Union in connection with the lawsuit.

employment status. However, the Union unlawfully threatened Cole with an additional suspension from the referral list if she failed to pay the trial cost assessment within 10 days, and unlawfully maintained an internal regulation that excludes employees from the referral list if they do not timely pay all financial obligations owed to the Union.

A. General Principles

When a union operating an exclusive hiring hall[21] prevents an employee from being hired or causes an employee's discharge, the Board presumes that the effect of the union's action is to unlawfully encourage union membership because the union has displayed to all users of the hiring hall its power over their livelihoods.[22] However, the presumption may be rebutted where the union's action was pursuant to a lawful union security clause or was necessary to the effective performance of its representative function.[23] Unions have successfully rebutted the presumption where, e.g., the employee's conduct was so

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[21] An exclusive hiring hall is one in which the union is the first and primary source of employees for an employer and can be created by written agreement, oral understanding, or past practice. Plumbers Local 198 (Stone & Webster), 319 NLRB 609, 612 (1995); Teamsters Local 293 (Beverage Distributors), 302 NLRB 403, 404 (1991), enfd. mem. 959 F.2d 236 (6th Cir. 1992); Hoisting and Portable Engineers Local 302 (West Coast Steel Works), 144 NLRB 1449, 1452 (1963). The Board has found hiring halls to be exclusive where the employer has the contractual right to bring a certain number or percentage of employees onto a job, Carpenters Local 17 (Building Contractors), 312 NLRB 82, 84 (1993) (exclusive hiring hall for the 50% of the employer's workforce that it committed to hire from the union), or where a union retains exclusive authority for job referrals for some specified period of time before the employer can hire on its own. Boilermakers Local 587 (Stone & Webster Engineering), 233 NLRB 612, 614 (1977) (exclusive hiring hall where employer had right to hire directly if union unable to provide qualified employee within 48 hours).

[22] Stage Employees IATSE Local 720 (AVW Audio Visual), 332 NLRB 1, 2 (2000), revd. on other grounds 333 F.3d 927 (9th Cir. 2003); Operating Engineers Local 18 (Ohio Contractors Assn.), 204 NLRB 681, 681 (1973), enf. denied on other grounds and remanded per curiam 496 F.2d 1308 (6th Cir. 1974), reaff'd 220 NLRB 147 (1975), enf. denied 555 F.2d 552 (6th Cir. 1977).

[23] Ibid.

egregious as to foreclose any reasonable inference that the union's action was taken to encourage union membership[24]; the employee's conduct interfered with the mechanics of the referral process[25]; or the employee's conduct harmed the union's reputation and relationship with employers to which it supplies labor.[26]

On the other hand, union retaliation against a union member's wholly internal union activity, which is protected solely under the LMRDA and not under the Act, does not violate Section 8(b)(1)(A).[27] Instead, Section 8(b)(1)(A)'s proper scope in union discipline cases is to proscribe union conduct against union members that impacts on the employment relationship, impairs access to Board processes, pertains to unacceptable methods of union coercion, or otherwise impairs policies imbedded in the Act. If the union's conduct does implicate Section 8(b)(1)(A), the Board determines whether there is a violation by balancing the member's Section 7

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[24] Philadelphia Typographical Union No. 2 (Triangle Publications), 189 NLRB 829, 830 (1971) (union lawfully caused employee's layoff because employee, while serving as union treasurer, embezzled substantial union funds, threatening the union's financial survival).

[25] Carpenters Local 522 (Caudle-Hyatt), 269 NLRB 574, 576 (1984) (union lawfully caused discharge of employees who had circumvented hiring hall and obtained work directly from employer); Boilermakers Local 40 (Envirotech Corp.), 266 NLRB 432, 433 (1983) (union lawfully denied employee referral after employee had circumvented hiring hall by applying for work directly from employer).

[26] Stage Employees IATSE Local 150 (Mann Theatres), 268 NLRB 1292, 1295-96 (1984) (union lawfully refused to refer employee with history of misconduct and incompetence on various jobs to which he had been referred); Longshoremen ILA Local 341 (West Gulf Maritime Assn.), 254 NLRB 334, 337 (1981) (union lawfully refused to refer employee who had engaged in wildcat strike in violation of contractual no-strike clause).

[27] Office Employees Local 251 (Sandia National Laboratories), 331 NLRB 1417, 1424-25 (2000) (in quarrel between rival union factions, imposition of sanctions that included removal from union office and suspension or expulsion from union membership did not implicate 8(b)(1)(A), since sanctions were purely internal and did not affect employees' relationship with their employer or impair any policy of the Act).

rights against the legitimacy of the union interest at stake in the particular case.[28]

B. The Union unlawfully refused to refer Cole from its exclusive hiring hall for four work calls from November to March 2005 and temporarily from July to August.

The Union, which operates an exclusive hiring hall for TPAC,[29] unlawfully suspended Cole from the hiring hall for four work calls from November to March 2005. The Union prevented Cole from working at TPAC, presumptively encouraging Union membership by demonstrating its power over Cole's livelihood to all hiring hall users. The Union's justification for suspending Cole - her direct contact with Max Tour supervisor Lipsitz on May 4, allegedly in violation of Work Rule 5 and Disciplinary Rule 2-B4 - does not overcome the presumption.

The Union has not shown that suspending Cole from the hiring hall was necessary to the effective performance of its representative function. First, Cole's conduct - questioning Lipsitz directly about her employment history and the circumstances of her discharge - was not so egregious as to foreclose others from reasonably believing that her discipline was instituted in order to encourage or discourage Union membership.[30] Although Cole may have made

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[28] Service Employees Local 254 (Brandeis University), 332 NLRB 1118, 1122 (2000) (union's legitimate interest in ensuring the undivided loyalty of union representatives who deal with the employer about working conditions outweighed employees' Section 7 rights to hold office, engage in intraunion activity, or be represented by an elected employee representative of their choosing); Steelworkers Local 9292 (Allied Signal Technical Services), 336 NLRB 52, 54-55 (2001) (union interest in maintaining control over grievance process and policing its internal affairs so as to avoid erosion of its status outweighs employee's arguably impacted Section 7 rights, where it filed internal charges against employee and suspended his union membership for six months).

[29] The Union is the sole supplier of wardrobe employees for "yellow card" shows at TPAC, pursuant to the informal, one-year agreements that both parties have adhered to for about 25 years. The fact that TPAC directly employs its own workers for other types of shows does not diminish the Union's exclusive status with regard to yellow card shows.

[30] See Carpenters Local 1931 (John W. McCaffrey), 281 NLRB 1068, 1072 (1986) (union unlawfully excluded employee from

Lipsitz uncomfortable, her conduct was of an entirely different nature from embezzlement, for example, and certainly did not jeopardize the Union's very existence.[31] Second, Cole's conduct did not circumvent or otherwise interfere with the mechanics of the referral process. Her purpose in contacting Lipsitz was not to obtain work directly; indeed, she contacted him well after "The Producers" had left town.[32] Nor did Cole prevent the Union from adequately representing other hiring hall users.[33] Third, there is no evidence that Cole's conversation with

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referral; union action not justified by its belief that employee had informed a sister local that union members were working in its jurisdiction or by employee's belligerent conduct and obscene epithets at union hall); Longshoremen ILA Local 1408 (Jacksonville Maritime Assn.), 258 NLRB 132, 137-38 (1981), enfd. 705 F.2d 1549 (11th Cir. 1983) (union unlawfully barred employee from referral list; union action not justified even though employee had cursed and made threats at hiring hall); Operating Engineers Local 18 (Ohio Contractors Assn.), 204 NLRB at 681 (union unlawfully barred employee from hiring hall referrals; union's conduct not justified even though, in addition to shouting obscenities, employee stole ballots from internal union election).

[31] Compare Philadelphia Typographical Union No. 2 (Triangle Publications), 189 NLRB at 830 (union lawfully barred employee from hiring hall who had embezzled substantial amount of union funds).

[32] See Stage Employees IATSE Local 7 (Universal Studios), 254 NLRB 1139, 1139-40 (1981) (union operating exclusive hiring hall unlawfully refused to refer employees who had sought work directly from employer, because they had attempted to first contact the union to no avail, they performed no work for the employer when told at the jobsite that they first needed union clearance, and evidence indicated that their working would not have disrupted other referrals).

[33] We reject the Union's assertion that Cole, by directly contacting Lipsitz regarding an employment matter, interfered with the Union's ability to police Lipsitz's adherence to the terms and conditions of the informal Union-TPAC agreement. Cole did not seek an adjustment from Lipsitz regarding her dismissal from "The Producers" or otherwise undermine any terms of the Union's agreement with TPAC. Rather, she simply questioned Lipsitz about her employment history with Max Tour and the circumstances of her dismissal in an attempt to confirm her suspicion that Resha had not adequately represented her.

Lipsitz jeopardized the Union's reputation or future relationship with TPAC.[34] In this regard, Cole was acting solely in her capacity as an employee when she contacted Lipsitz, and did not hold herself out as a Union officer. Further, although Lipsitz was unhappy with Cole's work performance, he did not request that she or any other hiring hall user not be referred in the future.[35] Also, there is no evidence that Lipsitz notified TPAC that he was unhappy with the Union's performance as its exclusive supply of labor.

Similarly, we conclude that the Union violated the Act by temporarily suspending Cole from the referral list in July and August pending resolution of the internal Union charges. Thus, the July-August suspension was also based on Charge 2 (contacting a supervisor).[36] For the reasons described above, we presume that the Union's conduct unlawfully encouraged Union membership and that the suspension was not necessary to the effective performance of the Union's representative function.

We would not apply the Sandia/Brandeis analysis to any of Cole's suspensions from the referral list. That analysis is reserved for situations involving union discipline against members for wholly internal union conduct, such as intraunion political activity. We recognize that the Union

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[34] Compare Stage Employees IATSE Local 150 (Mann Theatres), 268 NLRB at 1295-96 (employee had history of misconduct and incompetence on various jobs to which he had been referred and several employers had specifically requested that he not be referred to their theaters again); Longshoremen ILA Local 341 (West Gulf Maritime Assn.), 254 NLRB at 337 (employee had engaged in wildcat strike in violation of contractual no-strike clause); Electrical Workers IBEW Local 873 (Kokomo-Marian Division), 250 NLRB 928, 928 fn. 3 (1980) (employee had been dropped from apprenticeship program for excessive absenteeism, and therefore was ineligible for referral under collective-bargaining agreement with employer).

[35] Significantly, the Union did not base Cole's suspensions from its referral system upon her allegedly poor job performance.

[36] Although the Union's July 7 letter advised Cole that the temporary suspension was based solely on Charge 1 (giving false information), the Union's August 23 letter stated that the suspension was also based on Charge 2 (contacting the supervisor), and that this had been inadvertently omitted from the July 7 letter.

justified the July-August suspension not only on Charge 2 (contacting a supervisor), but also on Charge 1 (providing false information). Charge 1 implicates Cole's alleged shortcomings as a Union officer and member, arguably the type of wholly internal union conduct analyzed under Sandia and Brandeis. However, since the July-August suspension violated 8(b)(1)(A) and (2) under the rebuttable presumption analysis, above, we need not assess its legality under the Brandeis balancing test.

C. The Union lawfully assessed Cole the costs of the intraunion trial.

On the other hand, the Union lawfully charged Cole for the costs of her internal Union trial. The trial against Cole was instituted for her wholly internal Union conduct: giving false information at a Union meeting (Charge 1); refusing Union requests to supply a letter she had sent to the International president (Charge 3); and failure to perform various duties required of the Union president (Charges 4, 5, and 6). The penalties the Union imposed on Cole for being found guilty – impeachment and an assessment for the costs of the trial – have no bearing on Cole's employment or opportunities for future employment. Therefore, the Union's assessment of $3,334.14 to Cole, while she was still a member, does not fall within the ambit of Section 8(b)(1)(A), and there is no need to balance Cole's Section 7 rights against the legitimacy of the Union interest at stake here.[37] Accordingly, the Union's subsequent threat to sue Cole in order to collect the assessment was also lawful.[38] The fact that the threat to

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[37] Office Employees Local 251 (Sandia National Laboratories), 331 NLRB at 1424-25; Textile Processors Local 311 (Mission Uniform), 332 NLRB 1352, 1354 (2000) (union lawfully refused to accept tender of membership dues, thereby precluding employee's run for union president; penalty involved strictly internal matters and did not "affect her future employment opportunities, or otherwise adversely affect her conditions of employment"); Teamsters Local 170 (Leaseway Motor Car), 333 NLRB 1290, 1291 (2001) (union lawfully removed from union office supporters of losing candidate for union presidency; no violation of 8(b)(1)(A), because case involved purely intraunion dispute resulting in intraunion discipline, and no indication that the discipline imposed affected employees' employment or opportunities for employment with any employer).

[38] Cf. International Longshoremen's Assn. (Jacksonville Maritime Assn.), 258 NLRB at 138 (union could lawfully discipline member who had cursed and made threats at hiring

sue occurred when Cole was no longer a member is immaterial.[39]

D. The Union unlawfully threatened to remove Cole from the referral list unless she timely paid the costs of her intraunion trial.

Although the Union lawfully charged Cole for the costs of her internal Union trial, its threat to remove her from the referral list if she did not pay within 10 days violated the Act.[40] Thus, the Union's October 8 letter informed Cole that she would become a "member not in good standing" for failure to timely pay. This amounts to an implied threat of job loss, because Article X, Section 1 of the Union constitution states that a member not in good standing shall be removed from the referral list. It is well established that a union operating an exclusive hiring hall

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hall by resort to internal sanctions or the state courts, but not by denying him employment).

[39] Otherwise lawful union fines imposed for pre-resignation conduct are not rendered unlawful when actually levied after the person resigns from the union. Newspaper Guild Local 3 (New York Times), 272 NLRB 338, 338 (1984); Communications Workers Local 9201 (Pacific Northwest Bell), 275 NLRB 1529, 1529 (1985).

[40] There is no evidence that the Union ever actually suspended Cole from the referral list for her failure to timely pay the trial cost assessment. Each of the Union's four letters advising Cole of her missed referrals between November 2004 and March 2005 referred to the Executive Board's ruling, and made no mention of Cole's failure to pay the trial cost assessment. Moreover, after Cole was passed on her fourth show, the Union reinstated her to the referral list even though she still had not paid the assessment. Finally, after the International denied Cole's appeal, the Union threatened to sue to collect the trial cost assessment, but made no further threat to remove her from the referral list. Indeed, the Union's letter dated May 2, 2005 expressly referenced the last paragraph of Article X, Section 1, concerning judicial enforcement of financial arrearages to the Union, but made no reference to the second paragraph of the provision, which requires that members not in good standing be removed from the referral list. In any event, the Union has recently informed the Region that Cole is currently on the referral list notwithstanding her failure to pay the trial cost assessment.

may not refuse to refer an employee for failure to pay a union fine or threaten to do so.[41]

E. Article X, Section 1 of the Union constitution is facially unlawful.

Finally, Article X, Section 1 of the Union constitution and bylaws is facially invalid to the extent it unconditionally requires employees to be removed from the referral list if they do not pay financial obligations owed to the Union within 10 days.[42] Accordingly, the Region should seek expunction of the offending provision from the Union's governing documents, even though it has not been enforced against Cole.[43]

B.J.K.

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[41] Fisher Theatre, 240 NLRB 678, 691 (1979) (union unlawfully refused to refer members for failure to pay union fines, which were calculated, in part, based on the cost of intraunion trials); Longshoremen Local 13 (Pacific Maritime Assn.), 228 NLRB 1383, 1385-86 (1977), enfd. 581 F.2d 1321 (9th Cir. 1978), cert. denied 440 U.S. 935 (1979) (union unlawfully threatened and instituted 10-day hiring hall suspension for member's failure to pay fine).

[42] Plumbers (Brinderson-Newberg), 297 NLRB 267, 269-70 (1989) (mere maintenance of union constitutional provision requiring fines to be paid before union would accept dues, in conjunction with a union-security provision, facially unlawful, as it threatens employees that failure to pay fines would, in effect, preclude their employment); Teamsters Local 287 (Airborne Express), 307 NLRB 980, 980-81 (1992) (same).

[43] Ibid. See also Auto Workers Local 73 (McDonnell Douglas), 282 NLRB 466, 466-67 (1986) (union required to expunge unlawful provisions from its governing documents, because merely informing employees through notice posting that union would cease to maintain and enforce provisions would be insufficient to erase coercive effect).